



## Overview of Local Authority & Preemption for Advocates in Florida

*This document provides a summary of local authority and preemption in Florida that can inform advocates' efforts to adopt new policies at the city or county level. State preemption laws limit or prohibit local policymaking in different areas. In addition to an overview of how local authority operates in Florida, this document provides examples of important policies that are preempted (i.e., prohibited), emergency powers that may be available to local officials, examples of key COVID-19 policies that local governments in Florida appear to have the power to implement, and ways in which advocates may expand their local authority through repeal of existing preemption and/or voter-initiated ballot measures.<sup>1</sup>*

### I. Summary of Home Rule in Florida

- Home rule cities have broad authority to legislate in any areas not preempted by superior legislative bodies.
- County governments have a considerable amount of power in Florida. Counties that have adopted charters ("charter counties") have home rule authority and may preempt cities within their boundaries from passing municipal ordinances that conflict with county laws. A county's charter may also explicitly allow municipal ordinances to control in situations where they conflict with county law.
- Municipalities in non-charter counties do not face county-level preemption, but may still be preempted by state legislation and the constitution.

### II. What Policies Are Preempted in Florida?

The following are examples of subject areas where the state has expressly preempted local action:

- Minimum wage and employment benefits for employees, including paid or unpaid leave<sup>2</sup>
- Project labor agreements<sup>3</sup>
- Inclusionary housing<sup>4</sup>

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<sup>1</sup> The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should contact an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

<sup>2</sup> Fla. Stat. Ann. § 218.077.

<sup>3</sup> Fla. Stat. Ann. § 255.0992.

<sup>4</sup> Fla Stat. Ann. § 125.01055.

- Rent control, except in a housing emergency<sup>5</sup>
- Classifying marketplace contractors (gig workers) as employees<sup>6</sup>
- Regulating short-term rentals<sup>7</sup>
- Regulation of firearms (with penalties for local governments and officials who adopt gun control regulations)<sup>8</sup>
- Regulation of transportation network companies (TNCs)<sup>9</sup>
- Local broadband<sup>10</sup>
- Regulation of public lodging establishments and public food service establishments<sup>11</sup>
- Regulation of mobile home parks, lodging parks, recreational vehicle parks, and recreational camps<sup>12</sup>
- Regulation of day laborer “labor pools”<sup>13</sup>
- Regulation of pesticides<sup>14</sup>
- Regulation of standards pertaining to agriculture and some regulation of farm operations<sup>15</sup>
- Regulation of the use or sale of Styrofoam<sup>16</sup>

### III. Emergency Powers in Florida

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<sup>5</sup> Fla. Stat. Ann. § 125.0103(2).

<sup>6</sup> Fla. Stat. Ann. § 451.02.

<sup>7</sup> Fla. Stat. Ann. § 509.032(7)(b).

<sup>8</sup> Fla. Stat. Ann. § 790.33.

<sup>9</sup> Fla. Stat. Ann. § 627.748(15).

<sup>10</sup> According to a memo on state restrictions on local broadband services, Florida imposes various requirements or limitations on municipal broadband initiatives. Baller Stokes & Lide, *State Restrictions on Community Broadband Services or Other Public Communications Initiatives* (July 1, 2020), <https://www.baller.com/wp-content/uploads/BallerStokesLideStateBarriers7-1-20.pdf>.

<sup>11</sup> Fla. Stat. Ann. § 509.032.

<sup>12</sup> Fla. Stat. Ann. § 513.012.

<sup>13</sup> Fla. Stat. Ann. § 448.21.

<sup>14</sup> Fla. Stat. Ann. § 487.051.

<sup>15</sup> See Fla. Stat. Ann. § 570.07; Fla. Stat. Ann. § 163.3162; Fla. Stat. Ann. § 823.14.

<sup>16</sup> Fla. Stat. Ann. § 500.90.

- The Florida Legislature has granted the Governor and the Division of Emergency Management broad powers for managing emergency situations.<sup>17</sup> The legislature also extended limited emergency powers to municipalities and other political subdivisions.<sup>18</sup> In part, local emergency powers include the authority to “appropriate and expend funds” and “provide for the health and safety of persons and property, including emergency assistance to the victims of any emergency.”<sup>19</sup>
- Political subdivisions are able to declare a local state of emergency in the event an emergency affects “only one subdivision.”<sup>20</sup> Local states of emergency are limited to seven days, although they can be extended as necessary in seven-day increments.<sup>21</sup> Local emergency declarations give political subdivisions “the power and authority to waive the procedures and formalities otherwise required of the political subdivision by law pertaining to” (among other things)... the “performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.”<sup>22</sup>
- In addition, the Florida governor has the power during emergencies to “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.”<sup>23</sup> There is limited case law defining the contours of this power or what statutes are considered a “regulatory statute prescribing the procedures for conduct of state business.” A single on point case from the appellate court indicates this power allows the Governor to suspend a statute governing public procurement.<sup>24</sup>
- Separate from the statutory grants of emergency powers described above, it is possible that a court may view an exercise of emergency powers (and preemption of a policy enacted through emergency powers) differently from an exercise of powers during non-emergency circumstances, especially if the emergency policy is clearly temporary.

#### **IV. Examples of Key COVID-19 Policies That Cities and Counties May Have Authority to Adopt**

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<sup>17</sup> Fla. Stat. Ann. § 252.31 *et seq.*

<sup>18</sup> Fla. Stat. Ann. § 252.38.

<sup>19</sup> Fla. Stat. Ann. § 252.38(3)(a)(1).

<sup>20</sup> Fla. Stat. Ann. § 252.38(3)(a)(5).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Fla. Stat. Ann. § 252.36(5)(a).

<sup>24</sup> *Blu-Med Response Sys. v. Florida*, 993 So.2d 150 (Fla. Dist. Ct. App. 2008).

- Paid sick leave for *independent contractors* (with a possible exception for TNC contractors)
- Minimum wages or premium pay for *independent contractors* (with a possible exception for TNC contractors)
- Fair scheduling requirements
- Rent control to address a housing emergency
- Rent freeze (delaying payment of rent to landlord) (Note: it is possible a rent freeze would be “field” preempted or face a constitutional challenge)
- Cap on fees for late rent payments (Note: it is possible a late payment fee cap would be “field” preempted or face a constitutional challenge)
- Worker health and safety ordinance to protect workers from contracting COVID-19

(For additional support and analysis, please contact LSSC).

## V. Repealing Preemption in Florida – Recent Examples & Rules for Bill Drafting

- During a time of crisis—and beyond—there may be opportunities to repeal state preemption of local authority. For example, in the 2020 Legislative Session, several preemption repeal bills were introduced to reinstating local authority to ban Styrofoam and plastic bags ban (SB 182/HB 6043), regulate firearms (SB 134/HB 6009), enact rent stabilization measures (HB 6013/SB 910), regulate tree-trimming (HB 6077), regulate telecommunications (SB 1848/HB 6075), enact sanctuary city policies (HB 6023), and enact local minimum wage and earned sick time ordinances (SB 1520/HB 6065).
- Some procedural considerations for repeal include:
  - **Single Subject Rule:** Any effort to repeal existing preemption in Florida should take into account the state’s “single subject rule.” Article III, § 6 of the Florida Constitution requires all laws to contain only one subject.<sup>25</sup> It is possible that a preemption repeal bill may address preemption of a variety of subject areas as long as all subjects are tied to the expansion or clarification of local authority, but advocates should consult with an attorney who can provide advice on the best approach in order to comply with the single subject rule.
  - **Repealing & Granting Affirmative Authority:** Nothing in state law precludes a bill that repeals existing preemption legislation and also grants affirmative

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<sup>25</sup> Fla. Const. art. III, § 6.

authority,<sup>26</sup> but advocates should consult with an attorney or legislative sponsor who can consult with legislative staff on bill drafting practices in Florida. In the 2020 legislative session, for example, the preemption repeal bills introduced did not include affirmative authority pursuant to legislative practice.

- For more information on efforts to repeal preemption and lessons learned from successful campaigns in other states, including sample model language, see [this report](#)<sup>27</sup> from the Local Solutions Support Center and the National Employment Law Project.

## **VI. Is There A Ballot Measure Process in Florida?**

- Florida residents can initiate amendments to the state constitution.<sup>28</sup> However, a recently passed law makes it more difficult for citizen-initiated measures to get on the ballot by disallowing gathered signatures to carry over into the next year and raising the threshold percentage of signatures needed to trigger a review of the petition by the Florida Supreme Court.<sup>29</sup>
- Florida residents *cannot* adopt new statewide statutes through ballot measures proposed by residents.
- Under Florida law, all municipal charters can be amended by ballot initiative.<sup>30</sup>

## **VII. What Organizations Are Fighting Preemption and Supporting Local Democracy?**

Advocates interested in working with other organizations in Florida focused on protecting local democracy and strengthening local authority can email [LSSC@supportdemocracy.org](mailto:LSSC@supportdemocracy.org).

For additional support, please contact The Local Solutions Support Center at [LSSC@supportdemocracy.org](mailto:LSSC@supportdemocracy.org).

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<sup>26</sup> See House Bill Drafting Service, *Guidelines for Drafting Legislation*, at 39-40, available at [https://www.myfloridahouse.gov/Handlers/LeagisDocumentRetriever.ashx?Leaf=HouseContent/Lists/FP\\_Reference%20Materials/Attachments/9/full\\_document.pdf&Area=House](https://www.myfloridahouse.gov/Handlers/LeagisDocumentRetriever.ashx?Leaf=HouseContent/Lists/FP_Reference%20Materials/Attachments/9/full_document.pdf&Area=House).

<sup>27</sup> Laura Huizar, Local Solutions Support Center and National Employment Law Project, *Repealing Preemption: Defending Local Democracy Now Includes A Growing Focus on Recovering Lost Local Authority* (Dec. 2019), <https://www.abetterbalance.org/wp-content/uploads/2020/01/White-Paper-Repealing-Preemption-FINAL.pdf>.

<sup>28</sup> Fla. Stat. Ann. § 100.371(1).

<sup>29</sup> Fla. Sess. Law 2020-15.

<sup>30</sup> Fla. Stat. Ann. § 166.031(3).